

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

THOMAS L. WILLIAMS,

Case No. 3:23-cv-00511-ART-CSD

Plaintiff,

ORDER

v.

STATE OF NEVADA, et al.,

Defendants.

Plaintiff Thomas L. Williams attempted to initiate an action in federal court. (ECF No. 1-1). However, because Plaintiff initiated this action on a civil rights form and then filed a notice that he had filed a petition for writ of habeas corpus, it was unclear to the Court what type of case Plaintiff intended to bring. (ECF No. 4 at 1). On October 31, 2023, the Court ordered Plaintiff to file on or before November 30, 2023, one of the following: (1) a notice voluntarily dismissing this action, (2) a notice stating he wishes to proceed on the § 1983 complaint docketed in this case, or (3) a notice withdrawing the § 1983 complaint and filing a petition for writ of habeas corpus under 28 U.S.C. § 2241 in this case. (*Id.* at 2). The Court also directed Plaintiff to pay the full filing fee for a civil rights action (\$402) or habeas action (\$5), or file a fully complete application to proceed *in forma pauperis* by November 30, 2023. (*Id.* at 3). In response to Plaintiff's letter, the Court extended Plaintiff's deadline to January 31, 2024, to comply with the Court's earlier order. (See ECF Nos. 5-1, 6). That deadline expired and Plaintiff did not file a notice, pay the filing fee, file an application to proceed *in forma pauperis*, or otherwise respond.

## I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based

1 on a party's failure to obey a court order or comply with local rules. *See Carey v.*  
2 *King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to  
3 comply with local rule requiring *pro se* plaintiffs to keep court apprised of  
4 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)  
5 (dismissal for failure to comply with court order). In determining whether to  
6 dismiss an action on one of these grounds, the Court must consider: (1) the  
7 public's interest in expeditious resolution of litigation; (2) the Court's need to  
8 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy  
9 favoring disposition of cases on their merits; and (5) the availability of less drastic  
10 alternatives. *See In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217,  
11 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th  
12 Cir. 1987)).

13 The first two factors, the public's interest in expeditiously resolving this  
14 litigation and the Court's interest in managing its docket, weigh in favor of  
15 dismissal of Plaintiff's claims. The third factor, risk of prejudice to defendants,  
16 also weighs in favor of dismissal because a presumption of injury arises from the  
17 occurrence of unreasonable delay in filing a pleading ordered by the court or  
18 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.  
19 1976). The fourth factor—the public policy favoring disposition of cases on their  
20 merits—is greatly outweighed by the factors favoring dismissal.

21 The fifth factor requires the Court to consider whether less drastic  
22 alternatives can be used to correct the party's failure that brought about the  
23 Court's need to consider dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983,  
24 992 (9th Cir. 1999) (explaining that considering less drastic alternatives *before*  
25 the party has disobeyed a court order does not satisfy this factor); *accord*  
26 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that  
27 “the persuasive force of” earlier Ninth Circuit cases that “implicitly accepted  
28 pursuit of less drastic alternatives prior to disobedience of the court's order as

1 satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled  
2 with the warning of dismissal for failure to comply[,]” have been “eroded” by  
3 *Yourish*). Courts “need not exhaust every sanction short of dismissal before finally  
4 dismissing a case, but must explore possible and meaningful alternatives.”  
5 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action  
6 cannot realistically proceed until and unless Plaintiff specifies what type of case  
7 he is trying to initiate and either pays the filing fee or submits an application to  
8 proceed *in forma pauperis*, the only alternative is to enter a third order setting  
9 another deadline. But the reality of repeating an ignored order is that it often only  
10 delays the inevitable and squanders the Court’s finite resources. The  
11 circumstances here do not indicate that this case will be an exception: there is  
12 no hint that Plaintiff needs additional time or evidence that he did not receive the  
13 Court’s order. Setting another deadline is not a meaningful alternative given  
14 these circumstances. So the fifth factor favors dismissal.

## 15 **II. CONCLUSION**

16 Having thoroughly considered these dismissal factors, the Court finds that  
17 they weigh in favor of dismissal. It is therefore ordered that this action is  
18 dismissed without prejudice based on Plaintiff’s failure to indicate which type of  
19 lawsuit he is trying to pursue and either pay the filing fee or file an application to  
20 proceed *in forma pauperis*. The Clerk of Court is directed to enter judgment  
21 accordingly and close this case. No other documents may be filed in this now-  
22 closed case. If Plaintiff wishes to pursue his claims, he must file a complaint or  
23 petition in a new case.

24 DATED THIS 6<sup>th</sup> day of February 2024.

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27 ANNE R. TRAUM  
28 UNITED STATES DISTRICT JUDGE